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No. 06-652

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In The
Supreme Court of the United States

BART DIDDEN, DOMENICK BOLOGNA,
CABERNET 119 REALTY CORP., OPUS 113 CORP.,
PAUILLAC 115 REALTY CORP.,
AND 117 NORTH MAIN STREET CORP.,

Petitioners,

v.

THE VILLAGE OF PORT CHESTER, et al.,

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Second Circuit**

~~MOTION OF PETITIONERS FOR LEAVE TO FILE SUPPLEMENTAL BRIEF AND~~ SUPPLEMENTAL BRIEF

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MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF

Petitioners hereby move this Court for leave to file the following Supplemental Brief in response to Respondents' Supplemental Brief.

Respectfully submitted,

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SUPPLEMENTAL BRIEF

Petitioners submit this brief in response to Respondents' improperly-filed "Supplemental Brief." The "Supplemental Brief" submitted by Appellees does not meet the limited permissible circumstances for filing such briefs. *See* S. Ct. R. 15(8). It is simply a rehashing of Respondents' arguments styled as a response to the briefs filed by *amici*. No doubt every Respondent would like an opportunity to respond to *amici* in support of a Petition for *Certiorari*. Had the U.S. Supreme Court wished to allow such briefing, it would have provided for it in its rules.

The impropriety of the brief is compounded by the fact that Respondents continue to ask this Court to resolve disputed factual allegations in an apparent attempt to make this very simple case seem complicated. This case was dismissed on a Rule 12(b)(6) motion. As such, it does not have a "record" (Supp. Br. 7), nor is the question before this Court one of whether "the facts would [] support" a pretextual takings claim. (Supp. Br. 6.) Petitioners alleged that their property was condemned solely because they refused to pay a private party $800,000 or give that private party a 50% interest in their business. The Second Circuit found that this allegation did not state a claim under the Fifth and Fourteenth Amendments to the Constitution. That is the only question before this Court, and Respondents' attempt to fog the issue through filing an inappropriate and scattershot "Supplemental Brief" should not obscure this case's obvious simplicity.

Petitioners regret having to burden this Court with further briefing and thank the Court for considering this response.

Respectfully submitted,

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